

BEFORE THE FEDERAL ELECTION COMMISSION

2014 DEC 18 PM 12:08

In the Matter of)

CASE CLOSURE UNDER THE)

MUR 6736)

ENFORCEMENT PRIORITY)

Art Halvorson)

SYSTEM)

Taxpayers for Art Halvorson Committee,)

and Catherine F. Jacobs, Treasurer)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"),¹ and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Office of General Counsel has determined that MUR 6736 should not be referred to the Alternative Dispute Resolution Office.

The Office of General Counsel has scored MUR 6736 as a low-rated matter.² For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that Art Halvorson violated 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C.

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² The EPS rating information is as follows: Complaint Filed: May 16, 2013. Response from Arthur Halvorson Filed May 31, 2013. Taxpayers for Art Halvorson Committee did not submit a Response.

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1 § 432(e)(1)) by failing to file a Statement of Candidacy (FEC Form 2) within fifteen days of
2 becoming a candidate.³ This Office also recommends that the Commission find no reason to
3 believe that Taxpayers for Al Halvorson and Catherine F. Jacobs, in her official capacity as
4 treasurer (collectively the "Committee"),⁴ violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C.
5 § 433(a)) by failing to file a Statement of Organization (FEC Form 1) within ten days after being
6 designated by Halvorson as his principal campaign committee.

7 Complainant William J. Haberstroh claims that there is a "near-certain likelihood" that
8 Halvorson had raised or spent in excess of \$5,000, did not submit a timely Statement of Candidacy,
9 and that "possibly" the Committee failed to submit a timely Statement of Organization. Compl. at
10 3. The Complaint does not provide specific allegations regarding contributions received or
11 expenditures made, but appears to rely upon on the alleged "organization, infrastructure, and
12 publicity" of Halvorson's efforts to support its assertion that funds were spent or raised in excess of
13 \$5,000. *Id.* The Complaint alleges that Halvorson's publicity has "created the perception that he
14 has made the decision" to be a candidate.⁵ *Id.* According to the Complaint, the Committee created
15 a website that is "organized and well-developed" at the URL address of
16 www.ArtHalvorsonForCongress.com, and includes the banner "Art Halvorson for Congress." *Id.* at
17 1. The Complaint claims that the website includes a biography of Halvorson, descriptions of

³ Halvorson was an unsuccessful 2014 primary election candidate for Pennsylvania's ninth congressional district.

⁴ At the time the Complaint was filed, the Committee operated under the name of Taxpayers for Al Halvorson Exploratory Committee.

⁵ Specifically, the Complaint alleges that Halvorson has created the perception of being a candidate by: participating in interviews in which he was referred to as a candidate, making statements to "indicate imminent candidacy," and "actively engag[ing] in speaking roles at political events." Compl. at 3. The Complaint includes a link to an April 15, 2013 article that reports Halvorson "intends to challenge" the incumbent and quotes Halvorson for stating that "I'm not declaring that I'm running, but I think the answer is going to be obvious." *Id.* at 1-2 (citing Gibson, Keegan, *Challenger Prepares Primary vs. Shuster*, POLITICSPA (April 15, 2013), <http://www.politicspa.com/challenger-prepares-primary-vs-shuster/47446/>).

1 “detailed policy positions,” and buttons linking to information regarding how individuals can
2 volunteer or mail contributions. *Id.* at 1, 3.

3 In his Response, Halvorson states that the complaint “is without merit.” Halvorson Resp. at

4 1. Halvorson explains that by April 15, 2013, he had “publicly announced the formation of an
5 exploratory committee and began the development of an exploratory shell webpage as a part of that
6 process.” *Id.* Halvorson asserts that the website was not “populated with issues” and did not have
7 the capability to receive donations. *Id.* Further, Halvorson explains that on May 18, 2013, he
8 publicly announced his candidacy, filed his Statement of Candidacy, and was “in the process of
9 forwarding FEC Form 1.” *Id.* Halvorson states that he received contributions consisting of \$100
10 from his daughter and an unsolicited \$15 from a citizen in the Ninth District of Pennsylvania. *Id.*
11 Additionally, Halvorson states that prior to his Response, he had spent “approximately” \$332 on
12 URL acquisition costs, as well as “incidental expenses,” which included gasoline to allow him to
13 visit individuals to determine their prospective level of support. *Id.* Halvorson also provided a
14 temporary statement for the Committee’s bank account that showed a previous balance of zero
15 dollars, a deposit of twenty-five dollars on May 17, 2013, and an ending balance of twenty-five
16 dollars as of May 30, 2013. *Id.* at 2.

17 An individual becomes a candidate for federal office when he or she has received
18 contributions or made expenditures in excess of \$5,000. 52 U.S.C. § 30101(2) (formerly 2 U.S.C.
19 § 431(2)); 11 C.F.R. § 100.3(a).⁶ Upon becoming a candidate, an individual has fifteen days to file

⁶ The Commission created a “testing the waters” exemption to the definitions of “contributions” and “expenditures” to enable individuals to receive and spend funds while determining the feasibility of becoming a candidate. See 11 C.F.R. §§ 100.72, 100.131. To qualify under this exemption, individuals may participate in certain activities such as conducting polls, making telephone calls, and traveling. *Id.* The Complaint indicates that Respondents have engaged in activities that exceed the scope of those permitted under the “testing the waters” exemption. See Compl. However, because the Response indicates Halvorson had not received contributions or made expenditures in excess of \$5,000, which would trigger the registration requirements under the Act, an analysis of whether his activities exceeded the scope of those permitted under the exemption is not necessary in this instance.

1 a Statement of Candidacy (FEC Form 2), and on that form, designate a political committee that will
2 serve as the candidate's principal campaign committee. 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C.
3 § 432(e)(1)); 11 C.F.R. § 101.1(a). The principal campaign committee then has ten days to file a
4 Statement of Organization (FEC Form 1). 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)); 11
5 C.F.R. § 102.1.

6 It appears that Halvorson was not a candidate under the Act and Commission regulations at
7 the time when the activity alleged in the Complaint occurred. Specifically, the Committee had
8 apparently not made expenditures or received contributions in excess of \$5,000. *See* Halvorson
9 Resp. at 1. Halvorson indicates that as of May 31, 2013, the Committee had received contributions
10 of approximately \$115 and made expenditures of approximately \$332.⁷ *Id.* After the Complaint
11 was filed, Halvorson voluntarily filed his Statement of Candidacy on May 28, 2013. *See* Statement
12 of Candidacy (filed May 28, 2013). Thus, it appears Halvorson filed his Statement of Candidacy
13 prior to reaching the \$5,000 threshold for becoming a candidate. Accordingly, the Office of
14 General Counsel recommends that the Commission find no reason to believe that Halvorson failed
15 to meet the registration and reporting requirements under 52 U.S.C. § 30102(e)(1) (formerly 2
16 U.S.C. § 432(e)(1)).⁸

17 Under Commission regulations, an individual does not become a candidate solely by
18 voluntarily filing a report; the individual is not a candidate until qualifying as such under 11 C.F.R.

⁷ The Committee's reports also indicate that Halvorson did not exceed the \$5,000 threshold at the time the Complaint was filed. Instead, the first contribution reported is for \$1,300 on June 7, 2013, and the first expenditure reported is for \$3,543 on June 4, 2013. *See* Taxpayers for Art Halvorson 2013 July Quarterly Report at 10, 12 (filed July 9, 2013), available at <http://docquery.fec.gov/pdf/680/13964010680/13964010680.pdf>. Halvorson loaned the Committee \$100,000 on June 27, 2013, and apparently exceeded the \$5,000 threshold on that date. *Id.* at 11.

⁸ The Complainant seems to concede that Halvorson would not be in violation of the registration requirements if he did not cross the \$5,000 threshold. Compl. at 2 ("... once an individual engages in campaign activity, if he or she has raised or spent more than \$5,000, the individual must register as a candidate with the [Federal Election Commission]").

1 § 100.3. *See* MUR 6650 (Citizens to Elect Soren Simonsen) at 3; *see also* 11 C.F.R. § 104.1.
2 Further, filing a Statement of Candidacy does not trigger a candidate's designation of a principal
3 campaign committee until he becomes a candidate under the Act and Commission regulations.
4 MUR 6650 at 3; 11 C.F.R. § 100.5(d). Therefore, Halvorson's filing of his Statement of Candidacy
5 on May 28, 2013, did not trigger the 10-day requirement for the Committee to file its Statement of
6 Organization.⁹ Although Halvorson's voluntary filing of his Statement of Candidacy did not make
7 the Committee subject to the Act or Commission regulations regarding the filing of its FEC Form 1,
8 the Committee nevertheless still chose to file its Statement of Organization on June 10, 2013. *See*
9 Statement of Organization (filed June 10, 2013). Thus, the Office of General Counsel recommends
10 that the Commission find no reason to believe that the Committee violated 52 U.S.C. § 30103(a)
11 (formerly 2 U.S.C. § 433(a)).

12 Accordingly, the Office of General Counsel recommends that the Commission find no
13 reason to believe that Art Halvorson violated 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C.
14 § 432(e)(1)) and find no reason to believe that Taxpayers for Art Halvorson Committee and
15 Catherine F. Jacobs, in her official capacity as treasurer, violated 52 U.S.C. § 30103(a) (formerly 2
16 U.S.C. § 433(a)); approve the attached Factual & Legal Analysis and the appropriate letters; and
17 close the file.

18 **RECOMMENDATIONS**
19

- 20 1. Find no reason to believe that Art Halvorson violated 52 U.S.C. § 30102(e)(1) (formerly 2
21 2 U.S.C. § 432(e)(1)) with respect to the allegations in this matter;
22

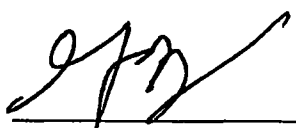
⁹ Therefore, it is of no consequence that the Statement of Organization was filed more than ten days after the Statement of Candidacy because both forms were filed prior to being required under the Act and Commission regulations.

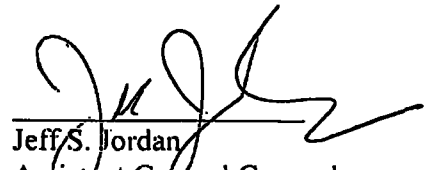
2. Find no reason to believe that Taxpayers for Art Halvorson Committee and Catherine F. Jacobs, in her official capacity as treasurer violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)) with respect to the allegations in this matter;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file.


General Counsel

12/19/14
Date

BY:


Gregory R. Baker
Deputy General Counsel


Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration


Rachel Provencher
Presidential Management Fellow
Complaints Examination
& Legal Administration